

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In The Matter of the Application of SAN DIEGO
GAS & ELECTRIC COMPANY (U 902 E) for a
Permit to Construct Electrical Facilities:
Cleveland National Forest Power Line
Replacement Projects

Application 12-10-009
(Filed October 17, 2012)

**SAN DIEGO GAS & ELECTRIC COMPANY'S (U 902E) RESPONSE TO PROTECT
OUR COMMUNITIES FOUNDATION AND CLEVELAND NATIONAL FOREST
FOUNDATION'S MOTION FOR STAY**

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October 17, 2016

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I. INTRODUCTION

Pursuant to Commission Rule of Practice and Procedure 11.1(e), San Diego Gas & Electric Company (SDG&E) responds to the Protect Our Communities Foundation (POC) and Cleveland National Forest Foundation’s (CNFF) Motion for Stay, filed on September 30, 2016. POC and CNFF (collectively, Petitioners) seek a stay of construction of SDG&E’s Cleveland National Forest (CNF) Power Line Replacement Projects (Project). The Motion for Stay should be denied. Petitioners have failed to show any harm, let alone irreparable harm, or a likelihood of success on the merits. A stay would also substantially harm the public interest and SDG&E by delaying the realization of the Project’s important fire safety and service reliability benefits.

II. LEGAL STANDARD

The Commission’s authority to stay a decision is discretionary. Decision (D.) 01-11-069 at 5. When faced with a motion for a stay of a Commission decision, the Commission considers: (1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits; and (3) a balancing of the harm to the applicant or the public interest if the decision is later reversed versus harm to other parties or the public interest if the decision is affirmed. *Id.*

The Commission may also apply the judicial standard for preliminary injunctions when evaluating a motion for stay. *See, e.g.*, D.05-04-040 at 3 (applying the preliminary injunction standard to deny a request for stay and temporary restraining order). Under this standard the moving party must demonstrate: (1) a likelihood of success on the merits; (2) irreparable injury to the moving party without the order; (3) no substantial harm to other interested parties; **and** (4) no harm to the public interest. *See id.* If there is no harm to the moving party, a stay may not be appropriate even if the party may ultimately prevail on the merits. D.04-08-056 at 3.

The harm alleged must be **specific to Petitioners**, not a generalized harm. *Carsten v. City of Del Mar*, 8 Cal. App. 4th 1642, 1656 (1992). Accordingly, environmental impacts are not *per se* irreparable harm. *See Lands Council v. McNair*, 537 F. 3d 981, 1005 (9th Cir. 2008) (en banc) (“[W]e decline to adopt a rule that *any* potential environmental injury *automatically* merits an injunction”). “[I]mpermanent . . . environmental impacts” do not show “any likelihood of irreparable environmental injury.” *Sierra Club v. Marsh*, 701 F. Supp. 886, 899 (D. Me. 1988).

III. BACKGROUND

SDG&E filed this application for a Permit to Construct (PTC) to reconstruct and fire harden various **existing** electric lines totaling approximately 100 miles in length in and around the CNF in eastern San Diego County. The Project will improve fire safety and service reliability of these facilities. D.16-05-038 (Decision) at 2.

The Project includes: (1) replacing existing wood pole structures with new steel pole structures designed to withstand higher wind speeds; (2) increasing conductor spacing on existing lines to maximize line clearances; (3) installing new conductors and removing weak spliced locations; (4) installing appurtenant facilities such as weather stations, fire safety and early fire detection equipment, smart-grid data collection equipment, or other technologies or

facilities to further increase fire safety and service reliability as new technologies become available; and (5) undergrounding up to 30 miles of existing lines.

Project construction will generally occur in existing rights-of-way and already disturbed areas and is not likely to require extensive vegetation clearing or tree removal. Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) at B-38. Construction activities will occur intermittently and will not all be completed concurrently. Motion for Stay, Attachment A. While construction activities may require occasional lane reductions or restrictions on access to recreational facilities, parks, and trails in the vicinity of construction, these impacts will be temporary and localized. *Id.* Following construction, all areas that are temporarily disturbed by construction will be restored to pre-construction conditions, as practicable. Final EIR/EIS at B-38. Restoration work will include the removal of construction material and debris, returning areas to their original contours, and re-seeding, as needed. *Id.* at B-51.

The Commission and the U.S. Forest Service jointly analyzed the Project and prepared a detailed EIR/EIS under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). *Id.* at ES-4. Following release of the Draft EIR/EIS on September 5, 2014, the agencies set a 60-day public comment period, which was 15 more days than the 45-day minimum. *Id.* As required by CEQA Guidelines section 15088, the agencies evaluated and responded to all comments on the Draft EIR/EIS received during the 60-day public review period. *Id.* at I-1; *id.* at Volume 2. On July 10, 2015, the Commission and the Forest Service released the Final EIR/EIS. The Draft EIR/EIS and Final EIR/EIS total almost 4,000 pages and thoroughly analyze the potential Project impacts on visual resources, air quality, biological resources, cultural and paleontological resources, greenhouse gas emissions, public

health and safety, fire and fuels management, hydrology and water quality, land use and planning, noise, public services and utilities, recreation, and transportation and traffic. *Id.* at D.1-1.

The Project, as initially proposed by SDG&E, would have had significant and unavoidable adverse impacts on visual resources, air quality, water resources, and land use. However, the Final EIR/EIS identified an Environmentally Superior Alternative Project (ESAP) that avoided each of these impacts while still meeting the Commission's basic project objectives of reducing fire risk and improving service reliability in and around the CNF.¹ *See id.* at ES-17 to ES-18. In other words, the Commission's environmental review process worked.

The approved ESAP avoids entirely or substantially lessens the potentially significant environmental effects of the proposed Project. Specifically, contrary to Petitioners' suggestion (Motion for Stay at 2-3), the ESAP will have no significant environmental impacts on biological resources, aesthetics, or public lands. Final EIR/EIS at ES-18 to ES-19. The Commission and Forest Service imposed over 40 separate mitigation measures, including measures specifically designed to mitigate biological impacts, visual impacts, and impacts to public lands. *See* Mitigation Monitoring, Compliance, and Reporting Program (attached to Decision). With these mitigation measures, the ESAP has a single and temporary unavoidable adverse impact on air quality due to construction emissions. Final EIR/EIS at ES-18 to ES-19.

In addition to the robust environmental review by the Commission and Forest Service, the Project went through a comprehensive administrative process before the Commission. Administrative Law Judge (ALJ) Yacknin held a full-day evidentiary hearing on October 11, 2015. Decision at 9. All parties had the opportunity to submit written testimony and evidence in

¹ The Project discussed in this opposition is the ESAP, with certain modifications required by the Forest Service's Final Record of Decision (ROD).

advance of the hearing. During the hearing, Petitioners and other Project opponents cross-examined SDG&E's witnesses. Following the hearing, the parties submitted opening and reply briefs to ALJ Yacknin. ALJ Yacknin carefully considered Petitioners' and other Project opponents' positions, as reflected in the Proposed Decision issued on April 26, 2016.

The Commission unanimously adopted the Proposed Decision and approved the Project's PTC on May 26, 2016. As of the date of this filing, SDG&E has received all required agency approvals to start construction of the Project. Construction began in September 2016. *See* Attachment A, Declaration of David L. Geier (Geier Decl.), ¶ 4.

IV. PETITIONERS DO NOT MEET THEIR HIGH BURDEN FOR A STAY

A. Petitioners Provide No Convincing Evidence or Argument That They Are Likely to Prevail on the Merits of Their Application for Rehearing

Petitioners argue that they are likely to succeed on the merits of their Application for Rehearing. As discussed in SDG&E's Response to Petitioners' Application for Rehearing, Petitioners' application fails to identify any legal errors in the Decision warranting rehearing and should be denied. Petitioners' Application for Rehearing consists almost entirely of recycled meritless arguments regarding the adequacy of the Project's environmental review and the Commission's review process, all of which the Commission already considered and rejected in the Decision. To the extent that Petitioners raised new arguments in their Application, those arguments also lack merit and do not identify any legal errors or deficiencies in the Decision. Accordingly, Petitioners cannot and do not demonstrate any likelihood of prevailing on their Application for Rehearing. This factor does not support a stay.

Statement of Overriding Considerations Supported by Substantial Evidence.

Petitioners continue to take issue with the Commission's statement of overriding considerations. Motion for Stay at 4. As discussed in SDG&E's Response to Petitioners' Application for

Rehearing, substantial evidence of the Project's important fire safety and service reliability benefits supports approving the Project and adopting a statement of overriding considerations despite the temporary significant air quality impact during construction. *See* SDG&E's Response to Petitioners' Application for Rehearing at 20-30. These benefits are documented in the Project's robust EIR/EIS, in briefing and sworn testimony before ALJ Yacknin, and in the Decision. *See, e.g.*, SDG&E Reply Brief in Support of a Permit to Construct (SDG&E Reply Brief) at 3-19; Decision at 31-33. Petitioners' motion provides no basis upon which the Commission should reconsider its prior weighing of this ample evidence.

Substantial Record Evidence Supports the Commission's Finding That Steel Poles Reduce Fire Risks as Compared to Wood Poles. Petitioners also repeat their prior arguments that the record lacks evidence of the comparative fire safety benefits of steel poles. Motion for Stay at 4. To the contrary, the record contains ample evidence that the Project's steel poles are designed to withstand higher wind speeds than wooden poles and therefore would reduce "the fire risk associated with existing facilities in a high fire hazard area." Final EIR/EIS at D.8-45 to D.8-46; Final ROD at 23; SDG&E's Response to Application for Rehearing at 23, 25-28. This is consistent with the numerous Commission findings that fire hardening activities, such as wood-to-steel pole replacement, reduce fire risks and improve service reliability. D.14-02-004 at 9 (replacing wood poles with steel poles "will improve fire safety conditions"); D.15-03-020 at 7-8 (electric line upgrade project would provide fire safety and service reliability benefits by "replacing existing wooden poles with the proposed steel poles, which are stronger and more resistant to wildfire"). This precedent is reflected in the Decision, which recognizes that "[w]ood poles, unlike steel poles, are susceptible to deterioration from fire, woodpeckers, termites and weather, and have inherent variability in the material strength properties." Decision at 31.

Petitioners' claim is particularly absurd given that the EIR/EIS specifically addressed the superiority of steel poles over wood poles *in response to Petitioners' comments on the Draft EIR/EIS*. See Final EIR/EIS at D6-10, D6-40. The EIR/EIS also analyzed the benefits of wood-to-steel pole conversion, including susceptibility to fire damage, strength, and height. *Id.* at D.8-45 to D.8-46, C-17; see also SDG&E Reply Brief at 10. For example, steel poles are better able to withstand lightning strikes as compared to wood poles. SDG&E Reply Brief at 10, citing Final EIR/EIS at D.8-45 to D.8-46. The EIR/EIS also explained that the existing wood poles were designed for historical design conditions of 56 miles per hour wind, whereas the new steel poles are designed for more extreme wind conditions of 85 miles per hour. Final EIR/EIS at I-8; see also *id.* at D.8-45 ("Winds can exceed 100 mph, particularly near the mouth of canyons oriented along the direction of airflow" such that, in some instances, "standard steel pole design parameters may be exceeded"). Petitioners' claims that the Commission lacked evidence of the benefits of steel poles continue to lack merit.

All Commission Substantive and Procedural Requirements Were Satisfied.

Petitioners also reassert tired claims that the Commission failed to comply with other substantive and procedural CEQA requirements. Motion for Stay at 4. These claims are all addressed in detail in SDG&E's Response to Petitioners' Application for Rehearing. As discussed therein, the record demonstrates that the Commission's thorough environmental review of the Project complies with CEQA. Specifically: (1) the Commission analyzed a reasonable range of alternatives (*see* SDG&E's Response to Petitioners' Application for Rehearing at 9-17); (2) the Commission's project objectives and purpose did not violate CEQA (*id.* at 17-19); (3) the Commission adequately analyzed the Project's potential growth-inducing effects (*id.* at 19); and (4) the Commission adequately responded to public comments on the EIR/EIS (*id.* at 19-20).

The Commission Properly Issued a PTC. Despite Petitioners’ repeated assertions to the contrary (*see* Motion for Stay at 4-5), the Commission was not required to consider cost and need in approving the Project. Decades of Commission precedent confirm that cost and need are irrelevant in a PTC proceeding. As discussed on pages 4-9 of SDG&E’s Response to Petitioners’ Application for Rehearing, under General Order 131-D, a PTC proceeding is focused on environmental review under CEQA. *See also* Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge at 7-8 (Mar. 17, 2014). Project cost and need fall beyond the scope of CEQA and, therefore, beyond the scope of a PTC proceeding. *See* SDG&E Reply Comments on Proposed Decision at 5; SDG&E Reply Brief at 29-38.

Indeed, the Commission has already rejected Petitioners’ argument as an “improper collateral attack on the many Commission decisions approving the exemption of projects [requiring a PTC] from such review.” Decision at 12. Petitioners offer no evidence suggesting that their previously-rejected argument is now meritorious. Accordingly, Petitioners have failed to demonstrate any likelihood of success on the merits of this claim.

B. Petitioners Do Not Demonstrate That They Will Suffer Any Injury

Petitioners argue that the Project’s construction will cause “irreparable harm to the public interest in protecting our public lands, wild life, and environment.” Motion for Stay at 2. Petitioners’ assertions are contradicted by the robust environmental analysis in the Final EIR/EIS, and Petitioners present no evidence of irreparable harm to the environment or any particular harm specific to Petitioners themselves.

With the adoption of the ESAP and imposition of mitigation measures, the Project has no significant impacts on biological resources, cultural and paleontological resources, greenhouse gases, public health and safety, fire and fuels management, hydrology and water quality, land use

and planning, noise, public services and utilities, recreation, and transportation and traffic. *See, e.g.,* Final EIR/EIS at ES-18 to ES-19.

The ESAP has been designed and routed to avoid sensitive resources and is subject to more than 40 mitigation measures and a number of applicant-proposed measures. *See* Mitigation Monitoring, Compliance, and Reporting Program (attached to Decision). The Final EIR/EIS conservatively concluded that the Project’s construction emissions will result in a significant temporary air quality impact.² *See* Final EIR/EIS at E-36; Decision at 35-36. This temporary impact is the Project’s lone significant environmental impact and does not constitute irreparable harm generally nor irreparable harm specific to Petitioners.

In trying to make their case, Petitioners exaggerate the Project’s potential construction impacts and ignore clear record evidence to the contrary. While Petitioners suggest that the Project would create public health impacts, the Final EIR/EIS clearly explains that “since construction activities at any given location will be short-term and would move along the various alignments linearly, construction activities would not expose sensitive receptors to substantial pollutant concentrations as construction activities and emissions would not occur in any one place for an extended period of time.” Final EIR/EIS at D.3-23. Petitioners have provided no evidence calling this conclusion into question.

Petitioners also argue that the Project will harm “[r]atepayers interests” due to the cost of construction. Motion for Stay at 3. Petitioners continue to assert that the Project is not “needed” and results in unreasonable costs. *Id.* As described at length in SDG&E’s Response to Petitioners’ Application for Rehearing and Section IV.A, above, considerations of cost and need

² The Final EIR/EIS’ evaluation of this impact was conservative and was based on maximum daily emissions. Final EIR/EIS at D.3-18. All feasible mitigation measures would be imposed to reduce these emissions. *Id.* at E-36.

are not germane to a PTC proceeding. Indeed, substantial evidence of the Project's numerous benefits cuts *against* issuing a stay. *See, e.g.*, SDG&E's Response to Application for Rehearing at 23-28 (discussing the Project's fire hardening and service reliability benefits). In any event, monetary impacts to ratepayers generally do not constitute irreparable harm (*see Loder v. City of Glendale*, 216 Cal. App. 3d 777, 785 (1989) [allegations of monetary harm to taxpayers insufficient to warrant injunctive relief]; *Carsten v. City of Del Mar*, 8 Cal. App. 4th 1642, 1656 (1992) [same]; *White v. Davis*, 30 Cal. 4th 528, 556-557 (2003) [summarizing California cases confirming same], and do not constitute a harm specific to Petitioners. *See Carsten*, 8 Cal. App. 4th at 1656 (to prevail on a preliminary injunction, the harm alleged must be specific to petitioners, not a generalized harm).

Petitioners further suggest that, in the absence of a stay, Petitioners would be "deprived . . . of their right to review of the decision of a state agency" because the Commission has not ruled on Petitioners' Application for Rehearing. However, the Public Utilities Code is clear that the pendency of an application for rehearing does not in and of itself require a stay. *See* Public Utilities Code § 1735 (an application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision of the Commission, or operate to stay or postpone the enforcement of any order, "except in such cases and upon such terms as the commission by order directs.").

Unlike the Commission's reasoned conclusions based on substantial record evidence, Petitioners' motion relies on unsupported claims of "irreparable injury." Petitioners therefore fail to demonstrate any genuine harm, let alone any harm particular to them, that would result in immediate and irreparable injury warranting a stay. D.01-11-069 at 5.

C. The Public and SDG&E Would Suffer Substantial Harm If a Stay Is Granted

1. The Project Provides Numerous Important Public Benefits

It is not in the public interest to delay construction of this important fire-hardening project. The Project provides environmental, service reliability, and fire hardening benefits to customers in eastern San Diego County. Each of these benefits would be delayed if the Motion for Stay is granted.

Environmental Benefits. The Project reduces or eliminates existing land use and aesthetic impacts in and around the CNF from existing electric lines by undergrounding up to 30 miles of the approximately 100 miles of existing lines to be upgraded. *See, e.g.*, Final EIR/EIS at E-36, B-1, B-4. The Project will also replace existing lines with lines incorporating the Avian Power Line Interaction Committee design features, such as greater distance between conductors or placement underground. Thus, the Project will provide benefits associated with reducing the risk of wildlife and avian electrocutions and collisions related to electric lines. *Id.* at ES-17. A stay would delay these significant environmental and biological benefits.

Service Reliability. The Project will improve service reliability in and around the CNF, including in the unincorporated communities of Descanso, Campo, Pauma Valley, Santa Ysabel, and Warner Springs. *See id.* at E-33. Without the Project, there would be no improvements to service reliability, or such improvements would be dramatically delayed. *Id.* at E-27 (under the No Project Alternative, the “ongoing public health and fire risks associated with structural failure . . . due to extreme weather conditions would continue.”).

Fire Safety. The Project will improve fire safety in and around the CNF, an area of extreme fire hazard, through various “fire hardening” techniques, including: (1) replacing existing wood pole structures with new steel pole structures designed to withstand higher wind

speeds; (2) increasing conductor spacing to maximize line clearances; (3) installing new conductors and removing weak spliced locations; (4) installing appurtenant facilities, such as weather stations, fire safety and early fire detection equipment, smart-grid system data collection equipment, or other technologies or facilities, to further increase fire safety and service reliability as new technologies become available; and (5) undergrounding up to 30 miles of existing lines. *See, e.g., id.* at B-1; D.8-45 to D.8-46.

The Project's fire reduction measures will reduce the risk of ignition from power lines and enable power lines to better withstand wind and wildfire conditions, substantially reducing damages, loss, injury, or death involving fires compared to existing conditions. *See id.* at D.8-45 to D.8-46 (the probability that a power or distribution line "would ignite a wildfire would decrease with implementation of SDG&E's proposed project"). The Project is consistent with the Forest Service's recommendation to evaluate additional fire protection measures for SDG&E's electrical facilities within the CNF as part of the Project. *See id.* at A-6.

2. A Stay Would Delay the Project's Numerous Benefits and Is Contrary to the Public Interest's in Improved Fire Safety

Delaying the Project's critical benefits, particularly the Project's fire safety benefits, would be contrary to the public interest in fire safety and service reliability.

The severity of fire impacts in Southern California is beyond question. In D.09-09-030, the Commission acknowledged: "Santa Ana winds occur annually in Southern California during the fall and early winter. These strong, dry, offshore winds have led to some of California's largest and most damaging fires." D.09-09-030 at 9. "There is a grave and ongoing risk that Santa Ana windstorms will cause catastrophic power-line fires unless electric utilities in Southern California plan and prepare for such events." D.12-01-032 at 166.

The Project will have important fire safety benefits for the CNF and eastern San Diego County. This region of San Diego County is sparsely populated with small, scattered, unincorporated communities. *See* Final EIR/EIS at ES-1. Extreme risk from seasonal wildfires spurred by Santa Ana winds exists. Multiple intense wildfires have impacted the area in recent years, including in 2003 and 2007. *See id.* at D.8-3 (Project “would be located primarily within a Very High [Fire Hazard Severity Zone]” that is considered a “wildfire corridor” “because a large portion of the fuel bed has not burned in 40 years or more”), D.8-4 to D.8-6 (discussing fire history in the Project area, including wildland fires that “have prompted five Proclaimed States of Emergency, and wildland-urban interface fires [that] have prompted three Proclaimed States of Emergency within the County between 1950 and 2007”).

Fire threats in the Project vicinity are amplified by the extremely windy conditions that occur in mountain passes. The Final EIR/EIS describes how, as air is forced through coastal mountain passes, wind speeds of 40 miles per hour (mph) can be maintained for hours with gusts from 70 to 115 mph possible. *Id.* at D.8-3. In 2014, a 101 mph wind gust was recorded at the SDG&E Sill Hill weather station, near Tie Line 626. *Id.* Such strong winds can lead to serious fire suppression problems and can even result in the closure of sections of main highways. *Id.*

The consequences of a major wildfire igniting in the Project area could be dire. Assets at risk from such a wildfire include all structures within approximately 40 miles to the west of the Project area, stretching to the urbanized areas of Valley Center, Escondido, Ramona, Santee, El Cajon, Chula Vista, and some coastal cities. *Id.* at D.8-11. The result of an ignition under worst-case conditions would be potential wildfire threat to all structures and communities to the west of the Project area. *Id.* at D.8-12.

In approving the Project, the Commission determined that “the project benefits of reducing the risk of wildfires and power outages caused by powerline failure and allowing [SDG&E] to obtain a Master Special Use Permit to continue operating its electrical facilities within the Cleveland National Forest outweigh the project’s significant and unavoidable effects on air quality during project construction.” Decision at 2; *see also id.* at 32 (“These safety, reliability, economic and environmental benefits present overriding considerations that merit approval of the [Project], notwithstanding its significant, unmitigable effects on air quality during project construction.”).³ This decision is consistent with Commission precedent recognizing that “reducing risks of wildfire” is an overriding consideration warranting approval of a project. D.15-03-020 at 47 (overriding considerations warrant upgrades to existing lines in light of “[m]ajor reliability and safety benefits,” including “reducing risks of wildfire”).

As discussed in the Commission’s Decision, implementing the Project will have important “safety implications for residents and visitors to the Cleveland National Forest and adjacent lands.” Decision at 4. The Decision confirms that the potential harm from “fires in the Cleveland National Forest is enormous.” *Id.* at 33. Therefore, the public interest favors timely construction of the Project, which will reduce fire risks.

Moving forward with construction now and without delay is particularly important in light of the current severe wildfire risks in San Diego County. Geier Decl., ¶ 4. San Diego County is in the midst of a prolonged drought, which has increased the likelihood of ignition due to the receptivity of fuels, as well as the severity of wildfires, including in and around the CNF.

³ It is noteworthy that Petitioners also previously advocated for a complete undergrounding alternative, which would result in greater land disturbance, environmental impacts, and expense. *See, e.g.*, Petitioners’ Application for Rehearing at 19; *see also* Decision at 28-29 (the full undergrounding alternative “presents significant construction challenges and would result in greater impacts than the proposed project”); SDG&E Reply Brief at 26 (citing Final EIR/EIS at D6-36 to D6-37).

Id., ¶ 5. The drought and insect infestations have made tree mortality an important issue that can increase the risk of wildfires. *Id.* The CNF contains areas designated by CAL FIRE as the riskiest category for tree mortality. *Id.*

Much of the perennial vegetation in the CNF area has not burned in more than 40 years, creating additional fuel for large wildfires. *Id.*, ¶ 6. CAL FIRE has noted that five years of below-average rainfall is increasing the die-off of shrubs in the foothills and mountains, creating dead fuels that increase fire risks. *Id.* San Diego County has already experienced several “red flag” warnings this fall that demonstrate the ongoing fire risk. Geier Decl., ¶-7.

Implementation of the Project will reduce the risk of wildfire ignition in the forested mountain areas that face a particularly significant wildfire risk during this and upcoming wildfire seasons. Geier Decl., ¶ 8. Staying construction will delay the Project’s implementation and will delay the Project’s substantial fire safety benefits, which is against the public interest. *Id.*

Finally, staying construction could result in a violation of the Forest Service’s Master Special Use Permit (MSUP), which directs SDG&E to reconstruct and fire harden the applicable existing power lines within the CNF. *See* Final ROD at 2-3. Such a violation could result in SDG&E being ordered to remove lines that are not in compliance with the MSUP. Such an effort would upset the status quo, which is the exact opposite of what any stay is intended to achieve, and would result in serious reliability impacts. *See, e.g., Casmalia Resources, Ltd. v. County of Santa Barbara*, 195 Cal. App. 3d 827, 832 (1987) (“The purpose of a preliminary injunction is the preservation of the status quo until a final determination of the merits of the action.”).

V. CONCLUSION

Petitioners have not met their high burden of demonstrating that irreparable harm would occur absent the Commission's issuance of a stay. This alone is a sufficient ground on which to deny the Motion for Stay. In addition, Petitioners provide no evidence or argument to suggest that they are likely to prevail on the merits of their application for rehearing. The Project will result in public safety, reliability, and environmental benefits. Delaying these important benefits is contrary to the public interest. Petitioners' Motion for Stay should be denied.

Dated: October 17, 2016

Respectfully submitted,

/s/ Allen K. Trial

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DECLARATION OF DAVID L. GEIER

I, David L. Geier, declare as follows:

1. I am Vice President, Electrical Transmission & Engineering, at San Diego Gas & Electric Company (SDG&E). In that role, I am responsible for all aspects of electric transmission and substation operations, enterprise engineering, and major capital projects, including the Cleveland National Forest (CNF) Master Special Use Permit and Power Line Replacement Projects (Project). I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would testify as follows:

2. I hold a bachelor's degree in electrical engineering and power engineering curriculum from the University of Illinois, Urbana, and a master's degree in electrical engineering and computer engineering curriculum from San Diego State University. I am also a registered professional engineer in the State of California. I serve on the board and am chairman of the American Red Cross of San Diego/Imperial Counties. I am also on the Dean's advisory board for the engineering schools at San Diego State University and the University of San Diego. I am a member of the Institute of Electrical & Electronic Engineers (IEEE) and a past chairman of the IEEE Power Engineering Society of San Diego.

The Project Provides Substantial Fire Safety Benefits for Eastern San Diego County

3. SDG&E proposed the Project to increase fire safety and service reliability of its existing facilities in and around the CNF. The Project, as approved by the California Public Utilities Commission and U.S. Forest Service, will improve fire safety in and around the CNF, an area of extreme fire hazard, through various "fire hardening" techniques. These measures include: replacing existing wood pole structures with new steel pole structures designed to withstand higher wind speeds; increasing conductor spacing to maximize line clearances; installing new conductors and removing weak spliced locations; installing appurtenant facilities

such as weather stations, fire safety and early fire detection equipment, smart-grid data collection equipment, or other technologies or facilities to further increase fire safety and service reliability as new technologies become available; and removing and undergrounding certain portions of the line. These fire reduction measures will reduce the risk of ignition from electric lines and enable electric lines to better withstand wind and wildfire conditions, substantially reducing damages, loss, injury, or death involving fires compared to existing conditions. The Project and these measures are consistent with the Forest Service's recommendation to evaluate additional fire protection measures for SDG&E's electric facilities within the CNF as part of the Project.

A Construction Stay Would Delay the Project's Important Fire Safety Benefits

4. SDG&E has received all required agency approvals to start construction on the Project, and construction has begun. A delay in construction would delay implementation of the Project's important fire safety benefits—benefits that are critical in light of the current severe wildfire risk in San Diego County.

5. California generally and the San Diego region specifically has been experiencing drought conditions for the past several years. This prolonged drought has increased the likelihood of ignition due to the receptivity of fuels, as well as the severity of wildfires, including in and around the CNF. Scientists believe that due to the drought and insect infestations, tree mortality has become an important issue. Dead and dying trees can worsen wildfire risk. The problem is so acute that CAL FIRE has created a website (<http://egis.fire.ca.gov/TreeMortalityViewer/>) that demonstrates areas of tree mortality concern. The CNF contains areas that have been placed in CAL FIRE's "Tier One High Hazard Zones," which is the riskiest category for tree mortality.

6. Much of the perennial vegetation in the CNF area has not burned in more than 40 years. This has allowed for accumulation of dead materials and for extensive plant growth.

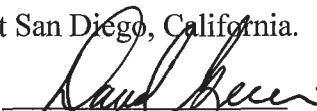
These conditions, in combination with the extended drought, increase the likelihood for ignition and severe fire spread in much of the CNF area. Indeed, CAL FIRE has noted that five years of below-average rainfall is increasing the die-off of shrubs in the foothills and mountains, creating dead fuels that increase fire risk. *See Attachment 1.*

7. San Diego County has already experienced several “red flag” warnings this fall that demonstrate the ongoing fire risk. *See Attachment 2* (list of San Diego County red flag warnings). The National Weather Service issues red flag warnings to alert fire departments of the onset, or possible onset, of critical weather and dry conditions that could lead to rapid or dramatic increases in wildfire activity.

8. Wildfire season in the San Diego region has historically been in the late summer and fall but is generally considered a year-round concern. Implementation of the Project will reduce the risk of wildfire ignition in the forested mountain areas that face a particularly significant wildfire risk during this and upcoming wildfire seasons. Staying construction will delay the Project’s implementation and will delay the Project’s substantial wildfire risk benefits.

I assert under penalty of perjury that the foregoing is true and correct.

Executed October 17, 2016, at San Diego, California.


By: David L. Geier

ATTACHMENT 1

PUBLIC SAFETY

Measuring and Managing Fire Risk in the Backcountry



CAL FIRE Forester Eric Just demonstrates how he clips and dries vegetation to check for fuel moisture content.

By **Yvette Urrea Moe**, County of San Diego Communications Office

Oct. 5, 2016 | 1:16 PM

After five years of prolonged drought, San Diego County native plants, trees and grasses are either extremely dry, dying out or dead, potentially making for more volatile fire conditions and a longer peak fire season.

How volatile exactly? Firefighters in CAL FIRE's Pre-Fire/Resource Management Office go out twice a month from May to October, to check on fuel moisture content to gauge how dire conditions are in the backcountry areas.

"Five years of below average rainfall is definitely increasing die-off of our shrubs in the foothills and mountains," said Eric Just, a CAL FIRE forester, who also serves San Diego County Fire. "When you have dead fuels, it will give us more of a fire issue."

Firefighters deal with two types of fuels: the living portion of the vegetation, or live fuels, and the portions that have died over the years, or dead fuels. One of the biggest factors affecting fuel flammability is fuel moisture content. Live fuel moisture depends on the plant species, time of year, and annual rainfall, said Pete Scully, who works in the unit with Just. The less moist it is, the more likely to burn.



This line of bedraggled pine trees in the Mount Laguna area show the various stages of the drought.

Currently, San Diego County is about 10 percent below average for live fuel moisture — not quite a historic low, but on track to get there. Once plants get below 65 percent of fuel moisture in the live portions of the plant, they are in a critical stage and are more likely to burn easily. San Diego vegetation is holding fuel moisture now in the high 40s, low 50s, said Just.

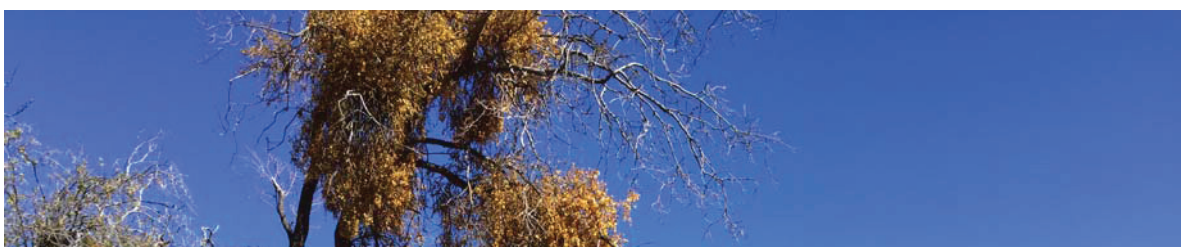
Dead fuel moisture depends on the current weather conditions and can range between 1 and more than 20 percent. Due to this much lower moisture content, dead fuels are primarily what carry a fire from one point to the next under normal conditions, he said.

Just and his staff check on sentinel sites to test the moisture content in a native plant called chamise, which is abundant throughout the state. The results are then entered into a national database, which allows firefighters to compare conditions and give a regional picture of the fire risk.

To determine fuel moisture content, they clip and collect established growth from live plants and then put them in a live fuel moisture analyzer machine. It weighs the sample at the beginning of the process, then heats up and evaporates all the moisture out of the sample and then weighs it again. The weight difference is the percentage of moisture that was in the sample.

“It tells you what you can expect in terms of relative fire behavior of what you could expect if a wildland fire were to ignite,” said Just.

As for our trees, much of our forestland in San Diego County has been consumed in past fires and not a lot of it is left with the exception of just a few unburned islands of trees, said Just. The County as a whole is still trying to heal from the 2003 and 2007 firestorms, he said.





A nearly dead oak tree in the Mount Laguna area is under attack by drought and a beetle infestation.

Oaks that survived those fires have come under attack from a different source: the goldspotted oak borer. The beetle has devastated oak woodlands, which typically surround communities like Ramona and Julian. Since the insect has no known predators here, the infestation has grown and the problem has largely gone unabated.

“We estimate at least 75- to 95,000 acres have been lost,” said Just. “It’s completely altered our oak woodland forest that San Diegans are so in love with.”

Just said there has been no funding for research into scientific means of combating the beetle, such as disrupting its reproduction cycle. For now, they rely on best management practices for containing the beetle.

“As far as affecting fire behavior, whenever you have dead trees, fires are going to burn much hotter and more intensely in those particular areas,” Just said. “When we are fighting a fire, oak woodlands are actually seen as a place where you can expect fire behavior to moderate because oaks are resistant to burning, humidity is higher and there’s not a lot of surface growth, just grass. But if you remove a woodland area and

replace it with brush, then you completely alter the fire ecology of that area.”

Just said there is debate over whether removing dead trees truly reduces the fire risk or whether it has little influence at all from a fire behavior perspective.

The biggest concern for Just is what grows in the place of the oaklands. The shade from the canopy of the oaks keeps brush from growing underneath, but if the tree dies and native vegetation and grasses move in, then the area is more susceptible to fire.

“Our native vegetation, the shrubs, are the most volatile vegetation you can have, so it’s good having a little break in that with oak woodland,” Just said. “So, that component of not having it will add a lot to our concerns.”

The fuel moisture program is just one component of the work the Pre-Fire office is tasked with to help manage fire risk. He and the other forester in his office plan and carry out prescribed burns, create fuel breaks, cut defensible space around communities, and oversee fuel reduction projects and grant management.

On the personal preparedness side, property owners can also help the fire service manage live and dead vegetation by creating and maintaining a minimum of 100 feet of defensible space around their homes to reduce the fire risk. Defensible space includes cutting out and removing all dead fuels and thinning out the surrounding vegetation. To learn more, visit ReadySanDiego.org.

Related:

CAL FIRE

Defensible Space

drought



Yvette Urrea Moe is a communications specialist with the County of San Diego Communications Office. [Contact](#)

ATTACHMENT 2

[Home \(/\)](#)

Updates

Please note that News Updates on SDCountyEmergency.com are intended for regional emergencies that pose significant threat to large numbers of people and/or property. Check media and local fire and/or law enforcement for information about smaller, localized events.

Post Date	Headline	Accessible Formats
9/24/2016 12:47:00 PM PDT	Red Flag Warning Issued Midnight Tonight to 3pm on Monday (/updates/red-flag-warning-issued-midnight-tonight-to-3pm-on-monday-092416-1246/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=135)
9/24/2016 10:40:00 AM PDT	Fire Weather Watch through 5pm Monday - Heat Advisory 11am Sunday through 8pm Monday (/updates/fire-weather-watch-through-5pm-monday---heat-advisory-11am-sunday-through-8pm-monday-092416-1039/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=134)
9/3/2016 12:28:00 PM PDT	Red Flag Warning Extended to Monday, September 5 (/updates/red-flag-warning-extended-to-monday-september-5-090316-1228/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=133)
9/1/2016 3:25:00 PM PDT	Red Flag Warning Issued for Friday, September 2 through Saturday, September 3 (/updates/red-flag-warning-issued-for-friday-september-2-through-saturday-september-3-090116-1522/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=132)
8/22/2016 11:40:00 PM PDT	Ocean Beach – Gas Leak – Shelter Opened (/updates/ocean-beach-gas-leak-shelter-opened-08222016-2343/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=131)

Post Date	Headline	Accessible Formats
8/18/2016 11:35:00 AM PDT	Red Flag Warning Extended to Friday, August 19 (/updates/red-flag-warning-extended-to-friday-august-19-081916-1235/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=130)
8/17/2016 6:33:00 PM PDT	Pointe Fire Update – 40% contained, evacuation lifted (/updates/pointe-fire-update-40-contained-evacuation-lifted-081716-1833/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=129)
8/17/2016 4:50:00 PM PDT	Pointe Fire in Spring Valley (/updates/pointe-fire-in-spring-valley-081716-1650/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=128)
8/16/2016 1:19:00 PM PDT	Red Flag Warning Extended to Thursday, August 18 (/updates/red-flag-warning-extended-to-thursday-august-18-081616-1319/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=127)
8/15/2016 2:08:00 PM PDT	Red Flag Warning Issued Monday, August 15 through Wednesday, August 17 (/updates/red-flag-warning-issued-monday-august-15-through-wednesday-august-17-081516-1408/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=126)
7/22/2016 6:20:00 PM PDT	Rock Fire – Evacuations Lifted (/updates/rock-fire-evacuations-lifted-7-22-16-1820/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=125)
7/22/2016 5:30:00 PM PDT	Rock Fire – Evacuations and Road Closures (/updates/rock-fire-evacuations-and-road-closures-7-22-16-1730/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=124)
7/21/2016 2:30:00 PM PDT	Heat Advisory – through 8pm Sunday, July 24. (/updates/heat-advisory-through-8pm-sunday-july-24.-072116-1425/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=123)
7/18/2016 4:45:00 PM PDT	Feather Fire - Evacuations Lifted (/updates/feather-fire---evacuations-lifted-071816-1645/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=122)
7/18/2016 3:30:00 PM PDT	Feather Fire Update #1 (/updates/feather-fire-update-1-071816-1530/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=121)

Post Date	Headline	Accessible Formats
7/18/2016 2:10:00 PM PDT	Feather Fire Initial Notification (/updates/feather-fire-initial-notification-071816-1410/)	ASL Audio (http://ahasalerts.com/Alerts.aspx/1046)
6/23/2016 6:00:00 PM PDT	Border Fire Update – All Evacuations Lifted (/updates/border-fire-update-all-evacuations-lifted-06232016-1800/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=110)
6/23/2016 4:00:00 PM PDT	Border Fire Update - Road Closure Update (/updates/border-fire-update---road-closure-update-06232016-1600/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=106)
6/22/2016 8:35:00 PM PDT	Border Fire Update - Recovery Resources Available (/updates/border-fire-update-recovery-resources-available-06222016-2035/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=104)
6/22/2016 7:25:00 PM PDT	Border Fire Update – New Containment, Potrero Library to Reopen (/updates/border-fire-update-new-containment-potrero-library-to-reopen-06222016-1930/)	ASL Audio (http://ahasalerts.com/updates.aspx?id=101)

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(https://public.govdelivery.com/accounts/CASAND/subscriber/new?

topic_id=CASAND_169&pop=t)



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Page=News)



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